IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

SAINT LOUIS UNIVERSITY,)	
a Missouri benevolent corporation,)	
Plaintiff,)))	Case No. 4:07CV1733 CEJ
V.)	
AVIS MEYER,)	
Defendant.)	

PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-REPLY REGARDING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

COMES NOW Plaintiff Saint Louis University ("Plaintiff"), by and through its undersigned counsel, and moves this Court for Leave to file a short six page Sur-Reply to address new issues raised by Defendant for the first time in his Replies in support of his Motions for Summary Judgment. In support of this Motion, Plaintiff states as follows:

- 1. On September 12, 2008, Defendant Avis Meyer filed his Motion for Summary Judgment as to Counts I VI with Memorandum in Support thereof [dkt # 55, 56] and Motion for Summary Judgment regarding monetary damages with Memorandum in Support thereof [dkt # 57, 58].
- 2. The Motions raise two issues: (1) Defendant's use of Plaintiff's intellectual property and (2) Plaintiff's entitlement to monetary damages as a result of Defendant's conduct.
- 3. On October 21, 2008, Plaintiff filed its Responses in Opposition to Defendant's Motions [dkt # 64, 65, 66, 67], addressing the issues of "use" and the various avenues available for recovery of monetary damages.

4. On November 7, 2008, Defendant filed Replies in support of his Motions for

Summary Judgment [dkt 71, 72]. The Replies go well beyond the prior briefing, however, and

raise new meritless and misleading issues regarding Plaintiff's identification of witnesses, notice

of Plaintiff's right to elect statutory damages under a theory of counterfeiting, and the sufficiency

of Plaintiff's disclosure of its damages theories.

5. Plaintiff seeks leave to file the short six page Sur-Reply (exclusive of signature

pages) attached hereto to address these newly raised issues and to clarify the record.

6. Plaintiff does not make the instant Motion for any improper purpose or to delay

these proceedings.

WHEREFORE, Plaintiff Saint Louis University requests that this Court grant Plaintiff's

Motion for Leave to file Plaintiff's Sur-Reply in opposition to Defendant's Replies in support of

Defendant's Motions for Summary Judgment, and for such other and further relief as the Court

deems just under the circumstances.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

By: /s/ Bridget Hoy

Frank B. Janoski, #3480 Bridget Hoy, #109375

500 North Broadway, Suite 2000

St. Louis, MO 63102

Telephone: (314) 444-7600

Fax: (314) 612-7837

Email: fjanoski@lewisrice.com

Email: bhoy@lewisrice.com

ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I further certify that on the 14th day of November, 2008, the foregoing was filed with the Clerk of Court to be served via the Court's ECF system upon all counsel of record.

/s/ Bridget Hoy

Bridget Hoy LEWIS, RICE & FINGERSH, L.C. 500 N. Broadway, Suite 2000 St. Louis, MO 63102

Telephone: (314) 444-7600 Facsimile: (314) 612-7837 E-mail: bhoy@lewisrice.com